

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10845 of 2000

with

SPECIAL CIVIL APPLICATION No 11910 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANASMA NAGARIK SAHAKARI BANK LTD.

Versus

AMBICA MOSAIC INDUSTRIES

Appearance:

1. Special Civil Application No. 10845 of 2000
MR UNWALLA for MR PK JANI for Petitioner
MR BM MANGUKIYA for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4,6
MS BELA A PRAJAPATI for Respondent No. 5
 2. Special Civil Application No. 11910 of 2000
MR BM MANGUKIYA for Petitioners
MR UNWALLA for MR PK JANI for Respondents
-

COMMON ORAL JUDGEMENT

Special Civil Application No.10845 of 2000 is filed by the Chanasma Nagarik Sahakari Bank Ltd. challenging the order dated 29th Sept.2000 passed by the Gujarat State Co-operative Tribunal, granting ad-interim stay to the respondent Shri Ambica Mosaic Industries and others on condition to deposit Rs.50,000/- on or before 20th Oct.2000 with notice to the Caveator. Special Civil Application No.11910 of 2000 is filed by Shri Ambica Mosaic Industries and others challenging the decision rendered by the Gujarat State Co-operative Tribunal dated 13th Sept.2000 disposing of the Revision Application No.216 of 2000 on the ground that it became infructuous. The parties to the proceedings will be hereinafter referred to as the "Bank" and the "Firm and its partners" respectively for the sake of convenience.

2. The Firm and its partners applied for a loan from the Bank for an amount of Rs.15,00,000/ on 24th Jan.1998 which was sanctioned and disbursed to them. As the Firm and its partners failed to repay the said amount, it was found that an amount of Rs.19,10,927.25 ps. remained outstanding on 31st March 2000. The Bank issued a notice dated 5.4.2000. As the Firm and its partners did not comply with the said notice, Summary Suit No.608 of 2000 came to be filed before the Registrar, Board of Nominees on 14th June 2000. The Board of Nominees issued summons on 16.6.2000 to the Firm and its partners and they were served with the same. On 16.8.2000, the Board of Nominees passed an order granting conditional leave to deposit Rs.6,00,000/- within 15 days. In other words, the Firm and its partners were asked to deposit the said amount on or before 31st August 2000. The Firm and its partners challenged the said order by filing Revision Application No.216 of 2000 on 25th August 2000 and on the said date, the Tribunal issued notice to the Bank and made it returnable on 13th Sept.2000 without granting any interim order in favour of the Firm. The Bank on 4.9.2000 filed an application before the Board of Nominees to pass a decree as the Firm failed to deposit the amount of Rs.6,00,000/- within the stipulated time. On the same day, the Board of Nominees passed a decree for the sum of Rs.19,17,308.25 ps. The Bank anticipated that the Firm will challenge the said decree by filing appeal before the Tribunal and therefore, filed a caveat on 8.9.2000. The Firm challenged the said decree dated 4.9.2000 by filing Appeal No.540 of 2000 before the

Tribunal on 29th Sept.2000. The Tribunal, on 29th Sept.2000, passed an interim order admitting the appeal on condition of depositing Rs.50,000/-. The Tribunal disposed of the Revision Application preferred by the Firm on the ground that it has become infructuous, on 13.9.2000. As stated above, the Bank has challenged the ad-interim order dated 29th Sept.2000 and the Firm and its partners have challenged the order dated 13th Sept.2000 passed by the Tribunal in these two petitions.

3. In view of the order dated 6.12.2000 passed by this Court in Special Civil Application No.11910 of 2000, both the petitions are heard together and are being disposed of by this common order.

4. As far as Special Civil Application No.10845 of 2000 is concerned, it is admittedly against the ad-interim order. It was contended by the learned Counsel for the Bank that even though the Bank filed a caveat, the Tribunal, without hearing the Bank, passed the ad-interim order by directing the Firm and its partners to deposit only Rs.50,000/- against the money decree for Rs.19,17,308.25 ps. My attention has been invited by the learned Counsel to the order passed by this Court in an identical situation, i.e. Special Civil Application No.8549 of 2000 decided on 7.2.2000 whereby this Court observed that the Tribunal should have directed at least to deposit 50% of the decretal amount for staying the decree of the Board of Nominees. Learned Counsel appearing for the Firm and its partners submitted that the Tribunal ought not to have disposed of the Revision Application preferred by them. In the submission of the learned Counsel merely because the Tribunal did not grant any interim order, the Board of Nominees could not have passed the money decree in favour of the Bank especially when the Revision Application was pending before the Tribunal. Learned Counsel further submitted that, as observed by the Board of Nominees, there are triable issues in favour of the Firm and its partners and on the disposal of the Revision Application, it will not be possible for the Firm and its partners to raise the contentions advanced either in the suit or in the Revision Application.

5. As far as Special Civil Application No.10845 of 2000 filed by the Bank is concerned, I am of the opinion that as the same is against the ad-interim order passed by the Tribunal, no interference is called for. True that the Bank filed caveat before the Tribunal, the Tribunal could have heard the Bank before passing the ad-interim order. However, as the Tribunal has passed

the ad-interim order, it is still open for the Bank to appear before the Tribunal and apply for vacating/modifying the said order dated 29th Sept.2000. It will not be proper for this Court to enter into the merits of the case at this stage especially when the Tribunal is seized of the case and has not passed a final order in the stay application. Similarly, the Tribunal was also justified in disposing of the Revision Application in view of the fact that the Board of Nominees, during the pendency of the Revision Application, passed a final decree in favour of the Bank. It is not in dispute that the Firm and its partners have failed to get the stay of the operation and implementation of the order dated 16.8.2000 passed by the Board of Nominees granting conditional leave to deposit Rs.6,00,000/-. In absence of any interim relief in favour of the Firm and its partners, the Board of Nominees was justified in passing the order dated 16.8.2000. I, therefore, see no merits in this contention raised by the learned Counsel for the Firm and its partners. As I am not expressing any opinion on merits of the case assuming that the Firm and its partners have a prima facie case in their favour and if triable issues are there, they can make out a case and point out the same in the appeal which is pending before the Tribunal. I am sure that while taking into consideration the points that may be advanced before it, the Tribunal will pass appropriate orders after hearing the parties. Thus, in my opinion, the Bank in both these petitions failed to point out any case warranting any interference. Subject to the observations made above, I see no merits in both these petitions. The same are hereby rejected. Rule in Special Civil Application no.10845 of 2000 is discharged. Ad-interim relief stands vacated. No order as to costs.

18th Sept.2001 (K.R. Vyas, J.)

Sreeram.